

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Section 150.02
Add Section 150.04
Title 14, California Code of Regulations
Re: Control Dates for Other Species of Nearshore Fish

I. Date of Initial Statement of Reasons: February 5, 2002

II. Dates and Locations of Scheduled Hearings:

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| (a) | Notice Hearing: | Date: | March 8, 2002 |
| | | Location: | San Diego, CA |
| (b) | Discussion Hearing: | Date: | April 5, 2002 |
| | | Locations: | Long Beach, CA |
| (c) | Adoption Hearing: | Date: | May 9, 2002 |
| | | Location: | Fresno, CA |

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Resulting from the Marine Life Management Act of 1998 (MLMA) (Chap. 1052, Stats. 1998), existing law authorizes the Fish and Game Commission (Commission) to adopt regulations for nearshore fish stocks, including establishment of restricted access fisheries (Fish and Game Code Sections 7071 and 8587.1). Under this management authority the Commission has adopted regulations on issuance and renewal of nearshore fishery permits, established control dates, defined fishing seasons and placed restrictions on the volume of catch for several of the nearshore fish stocks defined in Section 1.90, Title 14, CCR. However, similar restrictions have yet to be established for the other nearshore species defined in that Section.

Regulations are needed to establish additional control dates that will serve to notify commercial fishermen that if they have not participated in one component of the nearshore fishery prior to this date harvesting 9 species of nearshore fish stocks, they may not qualify for participation in a fishery for these species under a future restricted access program. These species include black rockfish, blue

rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish.

Furthermore, additional regulations would specify if these fishermen have not used a particular gear type prior to the control date to take these species, then they may not qualify for future participation in that segment of the nearshore fishery under a future gear endorsement program.

Under existing law, participants in the nearshore commercial finfish fishery use a variety of gear types to land their catch. Hook-and-line fishing gear is used to take live and fresh-dead nearshore fishes. Nets are also used to take some species. Traps are used for live nearshore fish under authority of a finfish trap permit in waters south of Point Arguello, Santa Barbara County, and a general trap permit north of Point Arguello (Fish and Game Code Sections 9001 and 9001.5). The amount, construction, and use of finfish traps and hook-and-line gear used to take nearshore fishes is specifically regulated (Fish and Game Code Sections 9001.6, 9001.7, 9027, and 9027.5). There has been interest in examining the possibility of limiting the number of participants who utilize each of these gear types by members of the Nearshore Fishery Advisory Committee and other stakeholders.

In 1998, nearshore fish stocks were first defined under MLMA as 10 species of fish commonly termed cabezon, greenlings of the genus *Hexagrammos* (kelp and rock greenling), California sheephead, California scorpionfish, five species of rockfish (black-and-yellow, gopher, kelp, China, and grass rockfishes), and 'may include other species of finfish found primarily in rocky reef or kelp habitat in nearshore waters' (Fish and Game Code Section 8586). Since that time, prompted by the creation of a draft nearshore fishery management plan, the need became clear to expand and clarify the number of species defined as nearshore fish stocks.

The Nearshore Fishery Permit described in Section 150, Title 14, CCR is required to commercially catch and possess only the original 10 species of nearshore fish pursuant to Section 150.01, Title 14, CCR. Additionally, the 9 species newly classified as nearshore are not covered under the two existing nearshore fishery control dates (one for restricted access and one for a gear endorsement program) established in Sections 150 and 150.03, Title 14, CCR, respectively. Instituting control dates for these newly-added species as a placeholder is imperative for development of a future restricted access program for this currently unregulated component of the nearshore fishery.

The majority of defined nearshore species (16 of 19) are currently regulated by the Pacific Fishery Management Council (Council) under the Groundfish Fishery

Management Plan. The Department will be requesting transfer of authority for some or all of these species in the near future. The transfer process is estimated to take 12 - 18 months. Having a control date in place now is crucial should the Department wish to proceed with managing this fishery via a restricted access program once the State has been given management authority. Furthermore, demonstrating that the State is willing to actively manage these species by establishing control date regulations now serves to substantiate the State's interest in transfer of management authority for nearshore groundfish from the Council.

Three date options for these regulations are provided for the Commission's consideration: 1) a control date of March 8, 2002 which is the date of the Commission meeting at which the notice publication may be authorized, 2) a control date of December 31, 2001, which is the last fishing date before the more restrictive shelf and slope rockfish regulations went into effect, and 3) control dates of December 31, 1999 for restricted access and October 20, 2000 for a gear endorsement program, which mirror the current control dates established in Section 150 and 150.03, Title 14, CCR, for Nearshore Fishery Permits and Nearshore Fishery Gear Endorsement Programs.

There is a great deal of concern that current catch restrictions for shelf and slope rockfish by the Council will cause a shift in fishing effort to nearshore species, including targeting those species that currently do not require the possession of a Nearshore Fishery Permit. Furthermore, additional effort may be placed on nearshore species for which no maximum harvest levels are established once optimum yields or allocations for other nearshore species are reached each year.

Adoption of control dates now will serve to notice new participants in this fishery that they may not be eligible for future participation, and that future investments in equipment or gear to participate in this fishery may not be considered. Moreover, the dates establish a point in time after which persons just beginning to participate in the fishery, or that begin using a type of gear in the fishery, must meet future criteria to be established by the Commission in order to maintain continued access to these commercial nearshore resources.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 7071 and 8587.1, Fish and Game Code.

Reference: Sections 7071, 8585.5, and 8587.1, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

No new or specific technologies or equipment are associated with the proposed regulations.

(d) Identification of Reports or Documents Supporting Regulation Change:

No reports or documents are associated with the proposed regulations.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

Nearshore Fishery Management Plan Public meetings

San Luis Obispo	September 5, 2001
Monterey	September 6, 2001
Oakland	September 19, 2001
Eureka	September 29, 2001
Los Angeles	October 2, 2001
San Diego	October 3, 2001

Nearshore Advisory Committee Meetings

Los Alamitos	May 23-24, 2001
Oakland	July 12-13, 2001
San Diego	September 20-21, 2001

IV. Description of Alternatives to Regulatory Action:

(a) Major Alternatives to Regulation Change:

The major alternatives considered for establishment of a control date differ from the 3 alternatives provided by having either a shorter or longer qualifying period than recommended.

A control date of November 5, 1999 was one date considered. This is the date the Council adopted as the control date for the open access portion of the Pacific coast groundfish fishery. Currently, most of the nearshore species included in this proposed control date are regulated by the Council. The majority of fishermen landing these species do so under the open access portion of the groundfish fishery. Therefore, they have already been noticed by the Council and the State would be conforming to their control date.

Establishing a control date after either of the proposed control dates would allow

an unknown number of individuals to qualify. It could also increase effort toward these nearshore fish stocks, because fishermen will know that they need landings in order to be considered for any future restricted access program.

(b) No Change Alternative:

As described in Section III(a), not adopting the proposed regulations would demonstrate an intention to leave the commercial nearshore fishery for black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish completely open-access. Such an approach conflicts with guidelines in the Marine Life Management Act which stress precautionary management for utilized commercial fishery resources. Establishing control dates for this segment of the nearshore fishery serves to notice fishermen that limited-access programs may be developed for future implementation, and is a recognized strategy outlined in the Commission's policy governing restricted access commercial fisheries.

(c) Consideration of Alternatives:

In view of information currently possessed, no alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action - Economic, Jobs, Local Agencies, State Agencies, Housing Costs and School Districts:

The Commission has assessed the potential for significant adverse economic impacts that might result from the proposed regulatory action and it has made the following determinations relative to the required statutory categories:

(a) Significant Adverse Economic Impact on Businesses, Including the Ability of California Businessmen to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, as it serves only to put individuals on notice that future regulations may be developed.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Affect on Housing Costs: None

Informative Digest/Plain English Overview

Regulations are needed to establish control dates that will serve to notify commercial fishermen that if they have not participated in one segment of the nearshore fishery prior to this date harvesting 9 species of nearshore fish stocks, they may not qualify for participation in a fishery for these species under a future restricted access program. These species include black rockfish, blue rockfish, brown rockfish, calico rockfish, copper rockfish, monkeyface eel, olive rockfish, quillback rockfish and treefish.

Additional regulations would specify the need to demonstrate use of a particular gear type prior to the control date to take these species, so that they could qualify for future participation in that segment of the nearshore fishery under a future gear endorsement program.

These 9 species are defined as nearshore fish stocks in current regulations, yet their take does not require a Nearshore Fishery Permit. Take of these species is not governed by the existing control dates already established for nearshore fishery restricted access and for a nearshore fishery gear endorsement program.

Three date options for these regulations are provided for the Commission's consideration: 1) a control date of March 8, 2002 which is the date of the Commission meeting at which the notice publication may be authorized, 2) a control date of December 31, 2001, which was the last fishing date before the more restrictive shelf and slope rockfish regulations went into effect, and 3) control dates of December 31, 1999 for restricted access and October 20, 2000 for a gear endorsement program, which mirror the current control dates established in Section 150 and 150.03, Title 14, CCR, for Nearshore Fishery Permits and Nearshore Fishery Gear Endorsement Programs.

Adoption of control dates now will serve to notice new participants in this component of the nearshore fishery that they may not be eligible for future participation, and that future investments in equipment or gear to participate in this fishery may not be considered. Moreover, the dates establish a point in time after which persons just beginning to participate in the fishery, or that begin using a new type of gear in the fishery, must meet future criteria to be established by the Commission in order to maintain continued access to these commercial nearshore resources.